

RICHARD WHEELER, JR.

IBLA 78-110

Decided May 1, 1978

Appeal from decision of the New Mexico State Office, Bureau of Land Management, rejecting simultaneously filed oil and gas lease offer NM-A31970 OKLA.

Affirmed.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Applications:
Drawings

A simultaneous oil and gas drawing entry card must be fully executed by the applicant, and when the state prefix to the parcel number is omitted, the lease offer is properly rejected.

APPEARANCES: Richmond F. Allen, Esq., Casey, Lane and Mittendorf, Washington, D.C., for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Richard Wheeler, Jr., appeals from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated November 10, 1977, and modified by decision dated December 7, 1977. The November 10 decision rejected appellant's simultaneously filed offer to lease for oil and gas on Parcel No. NM 1140 of the New Mexico BLM's September 1977 Notice of Lands Available for Oil and Gas Filings for which appellant's offer was drawn with first priority. The December 7, 1977, decision preserved this result but substituted the following reasoning for the rejection:

The September 19, 1977 Notice of Land Available for Oil and Gas Filings reads in part as follows: Filings must be made on simultaneous oil and gas drawing entry card, Bureau form 3112-1 (May 1974 or later). All drawing entry cards must show the State Code as prefix and part of the parcel number. Failure to comply with the

parcel numbering system will result in rejection of offer and the filing fee will be retained.

[1] On appeal, Wheeler contends that the requirement that the state prefix appear on the drawing entry card was violative of his rights under the Administrative Procedure Act, specifically 5 U.S.C. § 552(a)(1) (1976), requiring, in relevant part, publication in the Federal Register of "rules of procedure, descriptions of forms available or the place at which such forms may be obtained * * *." We find that appellant's rights under this section are adequately vindicated by 43 CFR 3112.2-1 which designates the "Simultaneous Oil and Gas Entry Card" as the proper form for noncompetitive offers to lease for oil and gas, and stipulates that such cards shall be "signed and fully executed" by the offeror.

The meaning of this latter phrase "signed and fully executed" was further particularized by the September 19, 1977, "Notice of Lands Available" published by the New Mexico State Office, BLM, supra. This notice set forth the requirement here disputed that all DEC's were to be submitted with the state prefix written as part of the parcel number. Wheeler appears to contend that this latter information should have been published in the Federal Register pursuant to 5 U.S.C. § 552(a)(1)(C), supra, but it is clear that this action by the New Mexico BLM is exempt from such publication requirements. See 5 U.S.C. § 552(a)(2)(B) (1976) which was added to the Administrative Procedure Act in 1967. The legislative history of this section refers to the measure as "a provision to help reduce the bulk of the Federal Register by making it unnecessary to publish material 'which is reasonably available' if that material has been incorporated in the Federal Register by reference * * *." 1/ The information relating to the requirement that the state prefix appear on any DEC submitted for the drawing here at issue was "reasonably available" in that it was published as part of the "lands available" notice, supra, and was therefore not required to be published in the Federal Register since the requirement for the state prefix was incorporated by reference therein at 43 CFR 3112.2-1.

Appellant argues further that the defect arising from the omission of the state prefix was cured when BLM officials inserted the notation "NM-A31970 OKLA" on the card after it was drawn with first priority. This placement of a file number on the DEC in no way affects the defects for which appellant's offer was rejected, and affords no basis for the reversal of BLM's action in disqualifying appellant's offer. As we have held in the past, a simultaneous oil and gas lease offer is properly rejected when the offeror fails to execute fully the drawing entry card by not identifying on the card the full designation of the parcel by both number and letter prefix.

1/ H. Rep. No. 1497, 89th Cong., 2nd Sess. ____ (1966).

Etta D. Harris, 29 IBLA 259 (1977); E. Fenton Cary, 29 IBLA 196 (1977). Appellant's offer was, therefore, properly rejected.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur.

Frederick Fishman
Administrative Judge

Joseph W. Goss
Administrative Judge

